



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Thomas F. Foote
P.O. Box 159
Marlow, NH 03456

Re: Failure to Install Septic System
Marlow Hill Road

**NOTICE OF PROPOSED
LICENSE ACTION
No. 05-003**

June 10, 2005

I. INTRODUCTION

This Notice of Proposed License Action is issued by the Department of Environmental Services, Water Division to Thomas Foote, pursuant to RSA 541-A:30 and RSA 485-A:36, I. The Division is proposing to revoke the septic installer's permit held by Thomas Foote, based on the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division ("the Division") is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Thomas Foote is an individual holding septic installer's license #2047 issued by the New Hampshire Department of Environmental Services ("DES"), having a mailing address of P.O. Box 159, Marlow, NH 03456.

III. SUMMARY OF FACTS AND LAW SUPPORTING PROPOSED ACTION

1. RSA 485-A:29-44 authorizes DES to regulate the subdivision of land and the construction, maintenance, and repair/replacement of individual sewage disposal systems ("septic systems"). Pursuant to rulemaking authority conferred therein, the Commissioner of DES has adopted Env-Ws 1000 to implement this program.
2. DES issued septic system installer permit #2047 to Thomas F. Foote, to allow Mr. Foote to engage in the business of installing individual septic systems according to approved plans, and to repair or replace individual septic systems in appropriate circumstances pursuant to RSA 485-A:36, I.
3. RSA 485-A:32, I, prohibits the construction of any building from which sewage or other wastes will discharge and prohibits the construction of a septic system without prior approval of the plans and specifications of the sewage or waste disposal system by DES.

4. Between approximately 1978 and the present, Thomas Foote has disposed of raw sewage and other wastes directly onto the ground at the property on Marlow Hill Road in Marlow by means of a straight pipe.

5. On March 20, 2003, the Division issued Thomas Foote a Letter of Deficiency ("LOD") requiring him to complete the following within 30 days:

- a. Engage a permitted septic system designer to prepare and submit septic system plans and specifications to DES for the total waste load;
- b. Obtain DES approval to construct the system;
- c. Construct and obtain approval to cover and use the system; and
- d. Operate and maintain the system in accordance with NH Admin. R. Env-Ws 1023.

6. The LOD further provided that in lieu of vacating the premises pending the design and installation of the approved system, the Footes were required to collect the sewage and have it disposed of at a permitted facility by a licensed septage hauler.

7. The Footes submitted an Application for Individual Sewage Disposal System Approval to the Division on or about June 5, 2003.

8. The Division approved the application on the same day, June 5, 2003.

9. To date, however, Mr. Foote has failed, neglected and/or refused to install the approved septic system.

10. All licensed septic installers are viewed by the Division as agents of the state for purposes of assuring the proper design, installation and operation of septic systems on properties in the state of New Hampshire.

11. RSA 485-A:36, I, authorizes DES to suspend or revoke a septic installer's license for just cause, including, but not limited to, the installation of waste disposal systems in violation of this subdivision or the refusal by a permit holder to correct defective work.

IV. VIOLATIONS ALLEGED

1. Thomas Foote has violated RSA 485-A:29, I by failing to install a proper waste disposal system on the property in Marlow since 1978.

V. PROPOSED ACTION

1. Based on the violations identified above and for just cause, the Division proposes that DES revoke septic system installer permit #2047 issued to Thomas F. Foote.

VI. HEARING, RESPONSE, PROPOSED SETTLEMENT

Mr. Foote has the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which Mr. Foote and any witnesses Mr. Foote may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross examination. If Mr. Foote wishes to have a hearing, one will be scheduled promptly.

RSA 541-A:31, III(e) provides that Mr. Foote has the right to have an attorney present to represent Mr. Foote at Mr. Foote's expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) Mr. Foote has the right to request DES to provide a certified shorthand court reporter at Mr. Foote's expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

Mr. Foote may waive his right to a hearing. If Mr. Foote waives the hearing, DES is prepared to revoke the Permit. Mr. Foote should notify DES of his decision by filling out and returning the enclosed form by the return date.

Anyone having questions regarding this matter should contact Richard J. de Seve, Compliance Supervisor, at 271-3442.

COPY
Harry T. Stewart, P.E., Director
DES Water Division

Certified Mail #

Enclosures

cc: Board of Selectmen, Town of Marlow
ec: Gretchen R. Hamel, DES Legal Unit Administrator
William E. Evans, P.E., DES Water Division
Richard J. de Seve, DES Water Division

RETURN THIS PAGE BY July 22, 2005

APPEARANCE

____ I desire a hearing in accordance with Env-C 200 regarding the proposed license action.

Name: _____
(Please type or print legibly)

Title: _____
(Please type or print legibly)

Signature _____

Date: _____

WAIVER OF HEARING

____ I certify that I understand my right to a hearing regarding the revocation of septic system installer permit #2047 and hereby waive(s) those rights and assent to the revocation.

Name: _____
(Please type or print legibly)

Title: _____
(Please type or print legibly)

Signature _____

Date: _____

Please return to: DES Legal Unit
Attn: Michael Sclafani
P.O. Box 95
Concord, NH 03302-0095